

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

<b>W. Mauldin Smith</b>	)	
	)	
<b>v.</b>	)	<b>Docket 08-0474</b>
	)	
<b>Illinois Bell Telephone Company</b>	)	
	)	
<b>Complaint as to whether the disconnection of a business</b>	)	
<b>number that existed more than 30 years was justified under</b>	)	
<b>Illinois law and the facts of this case in Chicago, Illinois</b>	)	

---

**REPLY BRIEF OF ILLINOIS BELL TELEPHONE COMPANY**

W. Mauldin Smith (“Mr. Smith” or “Complainant”) filed a formal complaint (the “Complaint”) against Illinois Bell Telephone Company (“AT&T Illinois”) on August 8, 2008, asserting that AT&T Illinois improperly disconnected his business line after he failed to pay past-due amounts owed on his business account. Following an evidentiary hearing, the parties submitted opening briefs on January 9, 2009. AT&T Illinois submits this reply brief to respond to the arguments made in Complainant’s opening brief.

**ARGUMENT**

**I. AT&T Illinois Properly Refrained from Sending Complainant a Disconnection Notice While His Chapter 13 Bankruptcy Case Was Pending.**

In his opening brief, Mr. Smith asserts that “customary billing procedure was not followed by AT&T Illinois by letting the account go for nine months.” Smith Opening Br. at 3. What Mr. Smith appears to mean is that AT&T Illinois violated Illinois law by not sending Mr. Smith a disconnection notice during the nine months in which he failed to pay for his business line. The record shows, however, that during the nine-month period to which Mr. Smith refers, AT&T Illinois treated Mr. Smith’s business account just as it treats the account of any of its

customers that have filed for bankruptcy and have pending bankruptcy petitions. As AT&T Illinois' witness explained at the evidentiary hearing, when Mr. Smith filed for Chapter 13 bankruptcy in late 2007 (Tr. 65:4-20; Tr. 75:16-21), AT&T Illinois put his business account on "no-treat status" and suspended collection activities on the account (including mailing disconnection notices and making collection calls) until it received notice that the bankruptcy petition had been dismissed (Tr. 77:16-21). Once AT&T Illinois received word that the petition was dismissed (due to Mr. Smith's failure to file proof that he had completed credit counseling, *see* AT&T Ex. 6B & Tr. 65:4-22), AT&T Illinois resumed its normal collection activities. *See* Tr. 78:5-10.

Regardless of how AT&T Illinois treated the business account during the pendency of the bankruptcy petition, Mr. Smith would not have a legal claim. There is no Illinois statute or regulation that requires a carrier to send its customer a disconnection notice as soon as the customer's account becomes past-due. In addition, as AT&T Illinois explained in its opening brief, Mr. Smith was not prejudiced by AT&T Illinois' decision not to send him a disconnection notice until after it received notice that his bankruptcy petition had been dismissed. Mr. Smith continued to receive AT&T Illinois' monthly bills while his bankruptcy petition was pending. *See* Tr. 77:21-78:2; Tr. 43:4-5; AT&T Ex. 2. Mr. Smith obviously knew that AT&T Illinois wanted him to pay the past-due amounts shown on those monthly bills. He did not need a disconnection notice to inform him of his debt. Instead of paying his bills, however, Mr. Smith let the past-due balance on his business account build up. *See* AT&T Ex. 2.

Thus, once AT&T Illinois determined that Mr. Smith's bankruptcy petition had been dismissed (*see* Tr. 75:16-21; Tr. 78:15-79:4), AT&T Illinois began to treat the business account as it normally would (Tr. 78:22-79:1) and sent Mr. Smith a disconnection notice informing him

that, if AT&T Illinois did not receive payment of his past-due balance of \$356.82 by July 15, 2008, his business line may be disconnected (*see* AT&T Ex. 3; Tr. 79:5-16). AT&T Illinois mailed the Disconnection Notice on July 7, 2008 (Tr. 80:1-4), eight days before the earliest date on which AT&T Illinois indicated it may disconnect the business line. As AT&T Illinois explained in its opening brief (at pp. 9-10) – and Mr. Smith did not dispute in his opening brief – AT&T Illinois’ actions complied with this Commission’s rules governing disconnection notices. *See* 83 Ill. Admin. Code § 735.130(c)(1) (“Service shall not be disconnected until at least five days after delivery of [the disconnection] notice or eight days after the postmark date on a mailed notice.”).

## **II. AT&T Illinois Properly Disconnected the Complainant’s Business Line After His Informal Complaint Was Concluded.**

In his opening brief, Mr. Smith asserts that AT&T Illinois “did not follow the law in Illinois” because, in Mr. Smith’s view, AT&T Illinois disconnected his business line while he had an informal complaint pending in this Commission. Smith Opening Br. at 1. Mr. Smith also erroneously states that AT&T Illinois “does not deny that it acted to terminate [his] service . . . while proceedings were still pending before the Commission.” *Id.* at 4. In fact, AT&T Illinois *did* follow the law governing informal complaints, AT&T Illinois did not disconnect Mr. Smith’s business line until *after* the informal complaint proceedings were concluded, and AT&T Illinois has never suggested otherwise.

Mr. Smith’s opening brief contains only conclusory allegations, and does not address the evidence contained in the record – including the testimony of AT&T Illinois’ two witnesses and the response of the Counselor from the Commission’s Consumer Services Divisions (“CSD”) to AT&T Illinois’ resolution of Mr. Smith’s informal complaint. Taken as a whole, the record shows that AT&T Illinois engaged in many discussions with Mr. Smith regarding his informal

complaint, but the parties were unable to reach a satisfactory resolution of the issues it raised. Representatives of AT&T Illinois had no fewer than seven phone contacts with Mr. Smith about the subject matter of his informal complaint – both before and after the complaint was filed. Specifically, an AT&T Illinois manager talked to Mr. Smith on July 14, 2008, and discussed the possible disconnection of service and payment arrangements with Mr. Smith (Tr. 86:10-87:3); an AT&T Illinois customer relations manager called Mr. Smith on July 16 about his informal complaint and left a voice message (Tr. 140:5-6); an AT&T Illinois collections manager called Mr. Smith on July 16 (Tr. 89:11-19); Mr. Smith called AT&T Illinois twice on July 17 and was referred to the billing department (Tr. 90:1-10; 90:17-91:13); an AT&T Illinois billing specialist called Mr. Smith on July 17 and discussed the correctness of the charges and AT&T Illinois' treatment of the account during bankruptcy (Tr. 91:18-92:8); and finally, representatives of AT&T Illinois' billing and collection departments called Mr. Smith on July 18, and, during that call, Mr. Smith refused to allow the representatives to present him with payment plan options (Tr. 92:12-93:8).

Despite these numerous communications, Mr. Smith and AT&T Illinois could not resolve Mr. Smith's informal complaint. Mr. Smith wanted to set up a payment plan under which he would pay only \$50 per month on his overdue balance (Tr. 47:11-13), meaning that it would take him at least eight months to pay off his bill. AT&T Illinois informed Mr. Smith that it did not accept such long-term payment arrangements on business accounts, and asked Mr. Smith to pay half of his overdue balance immediately, and half within two or three weeks. Tr. 47:13-18. Unsatisfied with this option, Mr. Smith did not agree to any arrangement under which he would pay off his past-due balance.

Upon reaching this impasse, AT&T Illinois determined that Mr. Smith's informal complaint could not be resolved, and closed the complaint. AT&T Illinois was not required to have one unfruitful conversation after another with Mr. Smith, once it became clear that Mr. Smith would not agree to a satisfactory arrangement for paying his past-due bills. AT&T Illinois simply followed its standard procedure for handling such informal complaints: before AT&T Illinois considered the complaint closed, "the manager [who's] handling the complaint" had "contacted the customer," "discussed the issue [raised by the informal complaint] with the customer," and "given [the Customer AT&T Illinois'] final response." Tr. 135:16-22. Mr. Smith's informal complaint was closed on Friday, July 18, 2008, when the parties could not agree to a payment arrangement, and thereafter AT&T Illinois properly disconnected Mr. Smith's business line. *See* Tr. 105:5-14; Tr. 154:20-155:6; Tr. 157:4-13.

AT&T Illinois' Ms. Anderson informed the CSD of this resolution on Monday, July 21, 2008, the day she returned from vacation. Tr. 142:14-144:14. Ms. Anderson subsequently spoke with the CSD's Counselor who was handling the informal complaint, and explained to him why AT&T Illinois "considered [the] issue to be closed on the 18th." Tr. 141:2-142:13; Tr. 144:7-14. The Counselor said he understood why AT&T Illinois had acted as it did, and did not suggest that AT&T Illinois had acted inappropriately or should restore Mr. Smith's service. Tr. 144:7-14. Thus, as the Counselor recognized, the informal complaint was no longer pending after Mr. Smith's final call with the billing and collections specialists on July 18. If the Counselor had told AT&T Illinois that its resolution of the informal complaint was improper, then AT&T Illinois would have taken whatever corrective action was deemed necessary. But the Counselor did not criticize AT&T Illinois' handling of the matter, and AT&T Illinois properly assumed that Mr. Smith's informal complaint was closed. Indeed, when Mr. Smith filed his formal complaint

with the Commission on August 8, 2008, Mr. Smith indicated, by marking the appropriate check-boxes on the Commission's pre-printed complaint form, that his informal complaint with the CSD had been closed. *See* Tr. 121:20-122:10.

In addition, as AT&T Illinois explained in its opening brief (at p. 13), AT&T Illinois would have had a right to disconnect Mr. Smith's service on July 18 even if his informal complaint was still pending at that time, because Mr. Smith did not follow the Commission's rules governing customer disputes. 83 Ill. Admin. Code § 735.130(h) provides that service "shall not be discontinued, and shall be restored if discontinued, for any reason which is the subject of a dispute or complaint pursuant to Section 735.190 and/or 735.200 while such dispute or complaint is pending and the complainant has complied with the provisions of these Sections." Sections 735.190 and 735.200 provide, in turn, that when a customer disputes a bill, service shall not be discontinued if the customer "pays the undisputed portion of the bill" and complies with other requirements. Here, one of the issues Mr. Smith appeared to raise in his informal complaint was his belief that "the figures [on AT&T Illinois' bills, as compared to the disconnection notice,] do not add up." AT&T Ex. 7. But instead of paying the portion of AT&T Illinois' bills which he knew he owed (and indeed, Mr. Smith did not contest *any* of those charges at the evidentiary hearing or in his opening brief), Mr. Smith did not pay any of his overdue balance while his informal complaint was pending. AT&T Illinois' decision to shut off service to Mr. Smith's business line was appropriate under the Commission's rules.

### **III. Mr. Smith's Allegations of Discrimination Are Not Properly Before the Commission.**

In his opening brief, Mr. Smith asserts that he "felt that he was not treated in the same manner that a white business that had kept the same number for over thirty years would have been treated." Smith Opening Br. at 3-4. According to Mr. Smith, "this was discrimination

which was not allowed under the law.” *Id.* at 4. There are several flaws in this argument. First, as Administrative Law Judge Haynes recognized at the evidentiary hearing, the Commission may only “look at whether or not” Mr. Smith’s business line was “improperly disconnected,” and “any other claims are not properly brought before the Illinois Commerce Commission” and cannot be considered. Tr. 147:18-22.

Second, even if the Commission had authority to consider claims of discrimination under some legal theory – a legal theory Mr. Smith has never identified – Mr. Smith’s allegations would be insufficient to show that AT&T Illinois discriminated against him because of his gender or race. Mr. Smith presented no factual support for his opinion that he was treated differently than “a white business” would have been treated. Smith Opening Br. at 3-4. In other contexts, courts have held that such conclusory allegations are insufficient to support a discrimination claim. In employment discrimination cases, for example, the courts have explained that “a subjective belief of discrimination[,], no matter how genuine, cannot be the sole basis for a finding of discrimination.” *Kizer v. Children’s Learning Center*, 962 F.2d 608, 613 (7th Cir. 1992) (internal quotation marks and citation omitted). *Compare Nichols v. Southern Illinois University-Edwardsville*, 510 F.3d 772, 783 (7th Cir. 2007) (holding that officers with state university police department failed to establish prima facie case of race discrimination under Title VII based on failure to promote, in that plaintiffs did not identify the qualifications of officers of another race that were upgraded, but relied solely upon their own subjective beliefs that they were as or more qualified than the upgraded officers). Despite the opportunity to conduct discovery and participate in an evidentiary hearing, Mr. Smith has presented no evidence that AT&T Illinois treated him any differently than it would have treated

any other customer that failed to pay his bill for nine months and let a substantial past-due balance accrue.

#### **IV. Mr. Smith Is Not Entitled To Damages or Other Relief.**

Mr. Smith argues that 220 ILCS 5/10-109 entitled him to have his business line restored to service and to receive an award of actual and punitive damages. *See* Smith Opening Brief at 2. In fact, Mr. Smith has no right to either remedy. First, AT&T Illinois is not required to restore service to the business line. As explained above, AT&T Illinois properly disconnected that line after the informal complaint was concluded, and after Mr. Smith made no attempt to pay off the undisputed portion of his past-due balance (even though the law required him to pay the undisputed portion of his bill in order to keep his service). The CSD's Counselor did not find fault with AT&T Illinois' decision to disconnect Mr. Smith's business line following the unsuccessful resolution of Mr. Smith's informal complaint. In addition, at this point it would be futile to require AT&T Illinois to restore service to the business line. There is no question that Mr. Smith owes the amounts AT&T Illinois billed him, and that Mr. Smith has not attempted to pay those amounts. If Mr. Smith's line was restored, AT&T Illinois could immediately send him a new disconnection notice (based on the over \$400 in past-due charges he owes), and, eight days later, disconnect the business line if he did not pay those charges in full. AT&T Illinois is under no obligation to enter into a deferred payment arrangement with its business customers. *See* 83 Ill. Admin. Code § 735.80(a) (“*nonresidential customers . . . who are indebted to a company for past due [telephone utility] service, may have the opportunity, at the discretion of the [telephone utility] company, to make arrangements with the utility to retire the debt by periodic payments referred to hereinafter as a Deferred Payment Agreement*” (emphasis added)).



Second, this Commission does not have authority to award Mr. Smith actual or punitive damages. As the Illinois Appellate Court has explained, the Commission “has no authority to fashion an award of damages.” *Moening v. Illinois Bell Tel. Co.*, 139 Ill. App. 3d 521, 528 (1st Dist. 1985); *see also* Order, *Beecham v. AT&T Communications of Illinois, Inc.*, No. 03-0421, 2003 WL 23330855 (ICC Dec. 17, 2003) (slip copy) (holding that the Commission does not have authority to award punitive damages); Order, *Whitfield v. Illinois Bell Telephone Co.*, No. 05-0496 (ICC Oct. 12, 2006) (dismissing complaint based on AT&T Illinois tariff provision that bars customers from recovering consequential damages from company).

Third, Mr. Smith has not presented any evidence whatsoever that he has suffered damages. Mr. Smith, as the complainant, had the burden of proof on the issue of damages. But although he was given a chance to conduct discovery and present his case at the evidentiary hearing, he has never explained what injury he has suffered or placed a monetary value on such injury.

## CONCLUSION

For these reasons, AT&T Illinois respectfully requests that the Commission deny Mr. Smith's Complaint in full.

Dated: January 30, 2009

Signed,

AT&T Illinois

By: /s Nissa J. Imbrock

Nissa J. Imbrock  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, Illinois 60606  
Telephone: (312) 701-8134

James A. Huttenhower  
General Attorney  
AT&T Illinois  
225 W. Randolph Street  
Floor 25 D  
Chicago, Illinois 60606  
Telephone: (312) 727-1444

*Attorneys for AT&T Illinois*

**CERTIFICATE OF SERVICE**

I, Nissa J. Imbrock, an attorney, certify that a copy of the foregoing **Reply Brief of Illinois Bell Telephone Company** was served on the following parties by First Class United States Mail and/or electronic transmission on January 30, 2009.

/s/ Nissa J. Imbrock  
Nissa J. Imbrock

**SERVICE LIST FOR ICC DOCKET 08-0474**

Leslie D. Haynes  
Administrative Law Judge  
Illinois Commerce Commission  
160 North LaSalle Street  
Suite C-800  
Chicago, IL 60601  
[lhaynes@icc.state.il.us](mailto:lhaynes@icc.state.il.us)

W. Mauldin Smith  
2109 West 51st Street  
Chicago, IL 60609